
OPINION OF THE PUBLIC ACCESS COUNSELOR

GREGORY WJ TROUT,
Complainant,

v.

CITY OF FORT WAYNE – UTILITIES DEPARTMENT
Respondent.

Formal Complaint No.
17-FC-159

Luke H. Britt
Public Access Counselor

BRITT, opinion of the Counselor:

This advisory opinion is in response to the formal complaint alleging the City of Fort Wayne Utilities Department (“City”) violated the Access to Public Records Act (“APRA”). Ind. Code §§ 5-14-3-1 to -10. Attorney Adam M. Henry, responded on behalf of the City. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on July 5, 2017.

BACKGROUND

On June 13, 2017, Gregory WJ Trout (“Complainant”) submitted a public records request to the City for the previous 12 months of water and sewer bills for three customers. The Complainant had previously requested a standing order for future water and sewer bills in August 2016.

The City responded by noting the August 2016 request was acknowledged—and denied—in a timely manner. The request from June 2017, however, was overlooked as it was mistaken to be identical to the prior request. The City acknowledged the new request, which was in fact different from the first, by stating the records do not exist because the bills requested were for facilities that are not customers of the utility. The City also argues that the bills could potentially contain trade secrets if they become records in the future.

ANALYSIS

APRA states that “(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information.” Ind. Code § 5-14-3-1. The City of Fort Wayne and its utility department are public agencies for the purposes of the APRA. *See* Ind. Code § 5-14-3-2(n). So, any person has the right to inspect and copy the City’s disclosable public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. *See* Ind. Code § 5-14-3-3(a).

The Access to Public Records Act regulates access to records that exist at the time of a request. APRA does not contemplate standing requests for records that may be created in the future. Moreover, the act rarely mandates the actual creation of a record. The City was correct to deny the first request in 2016 for this very reason. The second request was overlooked due to the similarity of the first. While this is regrettable, it appears to be an administrative error and not intentional.

As for the request itself, it appears as if the records in question do not exist because the facilities whose bills the Complainant requested are not on the City's utility customer roster. As for any trade secret determination, such an argument is premature and will not be addressed at this time.

CONCLUSION

Based on the foregoing, it is the Opinion of the Indiana Public Access Counselor the City of Fort Wayne -Utilities Department did not violate the Access to Public Records Act.

A handwritten signature in black ink, appearing to read 'LH Britt', with a long, sweeping underline.

Luke H. Britt
Public Access Counselor